

1 NICKY JATANA, SBN 197682
jatanan@jacksonlewis.com
2 CAROLINE B. WOLF, SBN 268014
caroline.wolf@jacksonlewis.com
3 JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
4 Los Angeles, CA 90017
(213) 689-0404 – Telephone
5 (213) 689-0430 – Facsimile

6 RANDALL S. THOMPSON [*Pro Hac Vice* application forthcoming]
randy.thompson@huschblackwell.com

7 ANTHONY G. GRICE [*Pro Hac Vice* application forthcoming]
anthony.grice@huschblackwell.com

8 HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
9 St. Louis, Missouri 63105
(314) 480-1500 – Telephone
10 (314) 480-1505 – Facsimile

11 Attorneys for Defendants
CONAGRA FOODS, INC. and
12 RALCORP HOLDINGS, INC.

13
14 **UNITED STATES DISTRICT COURT FOR THE**
15 **CENTRAL DISTRICT OF CALIFORNIA**
16 **WESTERN DIVISION**

17 JAMES UZOSIKE,

18 Plaintiff,

19 v.

21 CONAGRA FOODS, INC., a
22 Delaware corporation; RALCORP
23 HOLDINGS, INC., a Missouri
24 corporation; RODRIGO “PELON”
RODRIGUEZ, an individual; JUAN
25 SANDERS, an individual, and
DOES 1 through 50,

26 Defendants.

Case No.: 2:15-cv-03300

27
28 **NOTICE OF REMOVAL OF ACTION
TO THE UNITED STATES DISTRICT
COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA
PURSUANT TO 28 U.S.C. §§ 1332,
1441(a) and (b), and 1446**

(DIVERSITY JURISDICTION)

(Filed concurrently with Appendix of
California State Authorities, Notice of
Interested Parties and Corporate Disclosure
Statement, Notice of Related Cases, and
Civil Case Cover Sheet)

Complaint filed: March 12, 2015

1 TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT
2 COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, WESTERN
3 DIVISION, PLAINTIFF JAMES UZOSIKE AND TO HIS ATTORNEYS OF
4 RECORD:

5 PLEASE TAKE NOTICE that Defendants ConAgra Foods, Inc.
6 (“ConAgra”) and Ralcorp Holdings, Inc. (“Ralcorp”), by and through their
7 counsel, hereby remove this action to the United States District Court for the
8 Central District of California, Western Division. As grounds for removal,
9 ConAgra and Ralcorp state as follows:

10 1. On March 12, 2015, Plaintiff James Uzosike, a resident of Los
11 Angeles County, California, filed a Complaint against ConAgra, Ralcorp, Rodrigo
12 “Pelon” Rodriguez (“Rodriguez”), Juan Sanders (“Sanders”), and DOES 1 through
13 50 in the Superior Court of California in and for Los Angeles County, Central
14 District, namely, *James Uzosike v. ConAgra Foods, Inc. et al.*, Case No.
15 BC575409 (“Complaint”).

16 2. ConAgra and Ralcorp were served with a copy of the Complaint and a
17 summons from the state court on April 2, 2015. A true and correct copy of the
18 summons and Plaintiff’s Complaint are attached hereto as Exhibit A.

19 3. In his Complaint, Plaintiff alleges that ConAgra, Ralcorp, Rodriguez,
20 and Sanders harassed and discriminated against him because of his race and
21 national origin, and that ConAgra and Ralcorp discharged him because of his race
22 and national origin, and in retaliation for his complaints of harassment and
23 discrimination in violation of the California Fair Employment and Housing Act
24 (“FEHA”). *See Exhibit A*, Plaintiff’s Complaint. See also Plaintiff’s Charge of
25 Discrimination, a true and correct copy of which is attached hereto as Exhibit B.

26 4. ConAgra and Ralcorp deny Plaintiff’s allegations. On April 30, 2015,
27 ConAgra and Ralcorp served their Answers to Plaintiff’s Complaint, and on May
28 1, 2015, ConAgra and Ralcorp filed their Answers to Plaintiff’s Complaint in the

1 Los Angeles County Superior Court. True and correct copies of ConAgra and
2 Ralcorp's Answers to Plaintiff's Complaint are attached hereto as Exhibit C.

3 5. ConAgra is a Delaware corporation headquartered in Omaha,
4 Nebraska. *See* Declaration of Jennifer Deitloff, attached hereto as Exhibit D
5 ("Deitloff Declaration") at ¶¶ 3, 4. Ralcorp is a Missouri corporation with its
6 principal place of business in Omaha, Nebraska. Exhibit D, Deitloff Declaration at
7 ¶ 6.

8 6. Plaintiff's alleged damages are greater than \$75,000. *See* Exhibit A,
9 Plaintiff's Complaint; and *see infra* Section C. The Amount in Controversy in This
10 Matter Exceeds \$75,000.

11 7. On information and belief, Plaintiff has not served Rodriguez or
12 Sanders with a copy of the Complaint. ConAgra and Ralcorp lack knowledge and
13 information sufficient to form a belief as to where Rodriguez and Sanders reside.

14 8. Even if Rodriguez and Sanders have been or will be properly served
15 and one or both of them reside in California, their presence in this action does not
16 destroy diversity because they are sham defendants who cannot be held liable for
17 the sole cause of action – a claim of harassment in violation of the FEHA –
18 asserted against them in Plaintiff's Complaint. *See Hamilton Materials, Inc. v.*
19 *Dow Chem. Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007) ("If the plaintiff fails to
20 state a cause of action against a resident defendant, and the failure is obvious
21 according to the settled rules of the state, the joinder of the resident defendant is
22 fraudulent.") (*citing McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir.
23 1987) (former employee failed to state cause of action under California law against
24 individual defendants; thus individual defendants' joinder did not destroy
25 diversity)).

26 9. The presence of the Doe defendants also has no bearing on diversity
27 with respect to removal. *See* 28 U.S.C. § 1441(a) ("For the purposes of removal
28 under this Chapter, the citizenship of defendants sued under a fictitious name shall

1 be disregarded.”).

2 10. This lawsuit is a civil action over which this Court has original
3 jurisdiction under 28 U.S.C. § 1332, and is one which may be removed to this
4 Court by ConAgra and Ralcorp pursuant to the provisions of 28 U.S.C. § 1441(b)
5 in that it is a civil action between citizens of different states and the matter in
6 controversy exceeds the sum of \$75,000, exclusive of interest and costs.

7 11. ConAgra and Ralcorp have a right to remove this action pursuant to
8 28 U.S.C. § 1446(b) given less than thirty days have elapsed since they first
9 received a copy of the initial pleading and this Notice of Removal was filed less
10 than one year after the commencement of the lawsuit.

11 12. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel
12 certifies that a copy of this Notice of Removal and all supporting papers promptly
13 will be served on Plaintiff's counsel and filed with the Clerk of the Los Angeles
14 County Superior Court. Therefore, all procedural requirements under 28 U.S.C. §
15 1446 have been satisfied.

16 13. Venue of this action lies in the United States District Court for the
17 Central District of California, Western Division, pursuant to 28 U.S.C. §§ 1441
18 and 1331(b) because this is the judicial district of this Court in which Plaintiff
19 alleges the action arose and where Plaintiff resides. *See Exhibit A*, Plaintiff's
20 Complaint at ¶ 1; *see also Exhibit D*, Deitloff Declaration at ¶ 8.

21 **A. RODRIGUEZ AND SANDERS ARE SHAM DEFENDANTS WHOSE
22 PRESENCE IN THIS ACTION DOES NOT DESTROY DIVERSITY
23 BECAUSE THE SOLE CAUSE OF ACTION AGAINST THEM
24 (HARASSMENT IN VIOLATION OF THE FEHA) FAILS AS A
25 MATTER OF LAW.**

26 14. Plaintiff's improper inclusion of Rodriguez and Sanders in this
27 lawsuit does not destroy diversity jurisdiction. Rodriguez and Sanders are sham
28 defendants against whom Plaintiff has failed to state a claim.

1 15. Plaintiff asserts only one of his six purported causes of action against
 2 Rodriguez and Sanders – the third cause of action for harassment in violation of
 3 the FEHA. *See Exhibit A*, Plaintiff's Complaint at ¶¶ 42 - 49. However,
 4 Rodriguez and Sanders cannot be held liable for harassment under the FEHA
 5 because Plaintiff did not exhaust his administrative remedies against them.
 6 Plaintiff did not name them in his California Department of Fair Employment and
 7 Housing (“DFEH”) charge of discrimination. *See Exhibit A*, Plaintiff's Complaint
 8 at ¶ 35; *see also Exhibit B*, Plaintiff's Charge of Discrimination.

9 16. Under the FEHA, “any person claiming to be aggrieved . . . may file
 10 with the department a verified complaint, in writing . . . that shall state the name
 11 and address of the person [and/or] employer . . . alleged to have committed the
 12 unlawful practice complained of.” CAL. GOV’T CODE §12960(b). Where a
 13 plaintiff fails to name a defendant as a respondent or in the body of the DFEH
 14 charge of discrimination, the plaintiff cannot subsequently file a FEHA claim
 15 against the non-named defendant. *See DelGiacco v. Cox Communications, Inc.*,
 16 Case No. SACV 14-0200 DOC(DFMx), 2015 WL 1535260, at *11 (C.D. Cal.
 17 April 6, 2015) (“Each defendant of the lawsuit must be identified in the caption or
 18 body of the plaintiff’s administrative complaint”); *Cole v. Antelope Valley Union*
 19 *High Sch. Dist.*, 47 Cal. App. 4th 1505, 1511 (Cal. Ct. App. 1996) (dismissing
 20 individual defendants not named in caption or body of charge while allowing
 21 FEHA discrimination claim to proceed against individual named in body of
 22 charge).

23 17. Here, Plaintiff failed to exhaust his administrative remedies against
 24 Rodriguez and Sanders because his DFEH charge of discrimination did not name
 25 them or mention them at all. *See Exhibit B*, Plaintiff's Charge of Discrimination.
 26 At most, Plaintiff's charge vaguely references two Hispanic co-workers as
 27 harassers, which is insufficient to satisfy his burden under the FEHA to name the
 28 alleged wrongdoers in his charge of discrimination. *Cole*, 47 Cal. App. 4th at 1511

1 (plaintiff required to exhaust his administrative remedies against defendant by
 2 naming defendant as respondent in caption or in body of charge). Plaintiff's
 3 charge alleges no wrongful conduct against Rodriguez or Sanders, nor does it
 4 include any information about them that would provide notice that Plaintiff alleged
 5 wrongful conduct against them.¹ See Exhibit B, Plaintiff's Charge of
 6 Discrimination.

7 18. Accordingly, Plaintiff's FEHA harassment claim against Rodriguez
 8 and Sanders fails as a matter of law because Plaintiff failed to exhaust his
 9 administrative remedies against them. Rodriguez and Sanders are sham defendants
 10 and Plaintiff's inclusion of them in this lawsuit cannot defeat diversity.

11 **B. THERE IS COMPLETE DIVERSITY OF CITIZENSHIP BETWEEN
 12 PLAINTIFF AND CONAGRA AND RALCORP.**

13 19. Diversity jurisdiction exists where there is diversity of citizenship
 14 between the parties at the time the lawsuit is filed. *Grupo Dataflux v. Atlas Global*
 15 *Grp.*, 541 U.S. 567, 571 (2004). To establish citizenship for diversity purposes, a
 16 natural person must be a citizen of the United States and domiciled in a particular
 17 state. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).
 18 Persons are domiciled in the places where they reside with the intent to remain or
 19 to which they intend to return. *Kantor v. Warner-Lambert Co.*, 265 F.3d 853, 856
 20 (9th Cir. 2001).

21 20. A corporation is a citizen in a state where it is incorporated and where
 22 it has its principal place of business. 28 U.S.C. § 1332(c)(1). With respect to

23 ¹ It would be unreasonable to identify Rodriguez and Sanders as the alleged
 24 wrongdoers based solely on the allegations contained in Plaintiff's charge of
 25 discrimination. Even if it is assumed that Rodriguez and Sanders are Hispanic,
 26 Plaintiff worked with dozens of Hispanic individuals. Indeed, it could be that the
 27 reference in Plaintiff's charge is to others. Additionally, a review of Plaintiff's
 28 charge reveals that he had the ability to name Rodriguez and Sanders as the alleged
 wrongdoers because he identified other individuals in the body of his charge. *Id.*
 He simply chose not to.

1 ascertaining a corporation's principal place of business for purposes of diversity
2 jurisdiction, the United States Supreme Court has adopted the "nerve center test."
3 *The Hertz Corp. v. Friend*, 599 U.S. 77, 82 (2010). Under the nerve center test,
4 "for diversity jurisdiction purposes a corporation's principal place of business
5 'refer[s] to the place where a corporation's officers direct, control, and coordinate
6 the corporation's activities.'" *Harris v. Rand*, 682 F.3d 846, 851 (9th Cir. 2012)
7 *citing Hertz*, 599 U.S. at 82.

8 21. Plaintiff is and was at all relevant times a California resident. *See*
9 Exhibit A, Plaintiff's Complaint at ¶ 1; *see also* Exhibit B, Plaintiff's Charge of
10 Discrimination.

11 22. ConAgra is a Delaware corporation with its corporate headquarters
12 and principal place of business located at One ConAgra Drive, Omaha, Nebraska
13 68102. *See Exhibit D*, Deitloff Declaration at ¶ 3, 4.

14 23. ConAgra's management-level executives and corporate officers
15 maintain offices in Omaha and its corporate decisions are made through its Omaha
16 headquarters. *See Exhibit D*, Deitloff Declaration at ¶ 4.

17 24. ConAgra is therefore a citizen of Delaware and Nebraska for diversity
18 purposes. 28 U.S.C. § 1332(c)(1).

19 25. Ralcorp is a Missouri corporation that maintains its principal place of
20 business at ConAgra's headquarters in Omaha, Nebraska. *See Exhibit D*, Deitloff
21 Declaration at ¶ 6.

22 26. Ralcorp's corporate decisions are made through ConAgra's Omaha
23 headquarters. *See Exhibit D*, Deitloff Declaration at ¶ 6.

24 27. Ralcorp is therefore a citizen of Missouri and Nebraska for diversity
25 purposes. 28 U.S.C. § 1332(c)(1).

26 28. Because Plaintiff and ConAgra and Ralcorp are citizens of different
27 states, there is complete diversity of citizenship between the parties. 28 U.S.C. §
28 1332(a)(1).

1 **C. THE AMOUNT IN CONTROVERSY IN THIS MATTER EXCEEDS**
 2 **\$75,000.**

3 29. The amount in controversy requirement under 28 U.S.C. § 1332(a)
 4 requires that the matter in controversy exceed the sum or value of \$75,000,
 5 exclusive of interest and costs. 28 U.S.C. § 1332(a).

6 30. Where, as here, a plaintiff's state court complaint is silent as to the
 7 amount of damages claimed, the removing defendant(s) need only establish that it
 8 is more probable than not that the plaintiff's claims exceed the jurisdictional
 9 minimum. *Sanchez v. Monumental Life Ins. Co.*, 95 F.3d 856, 860-61 (9th Cir.
 10 1996).

11 31. "In measuring the amount in controversy, a court must assume that
 12 the allegations of the complaint are true and assume that a jury will return a verdict
 13 for the plaintiff on all claims made in the complaint." *Cain v. Hartford Life &*
 14 *Accident Ins. Co.*, 890 F. Supp. 2d 1246, 1249 (C.D. Cal. 2012). Of course,
 15 ConAgra and Ralcorp deny that Plaintiff is entitled to any relief.

16 32. Compensatory damages, punitive damages, and attorneys' fees, if
 17 recoverable as is the case here under the FEHA, are forms of relief that should be
 18 considered when determining the amount in controversy under 28 U.S.C.
 19 § 1332(a). *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).

20 33. Plaintiff's Complaint alleges that ConAgra and Ralcorp harassed and
 21 discriminated against him because of his race and national origin, and discharged
 22 him because of his race and national origin and in retaliation for his alleged
 23 complaints of race and national origin discrimination, all in violation of the FEHA.
 24 *See Exhibit A*, Plaintiff's Complaint at ¶¶ 16 - 22, 27, 30, 37, 45, and 62.

25 34. Plaintiff's Complaint also alleges that he seeks "compensatory
 26 damages, in an amount according to proof." *See Exhibit A*, Plaintiff's Complaint
 27 at p. 13. Plaintiff's alleged compensatory damages include back pay, front pay,
 28 and damages for physical and mental emotional distress. *See Exhibit A*, Plaintiff's

1 Complaint at ¶¶ 31, 32, 38, 39, 46, 47, 56, 64, 65.

2 35. At the time of Plaintiff's discharge, on September 27, 2013, Plaintiff
 3 earned \$10.30 per hour. *See Exhibit D*, Deitloff Declaration at ¶ 8. As a full-time
 4 employee, Plaintiff earned approximately \$21,424.00 per year. *See Exhibit D*,
 5 Deitloff Declaration at ¶ 8. Therefore, Plaintiff may recover approximately
 6 \$34,814.00 in back pay from the termination of his employment on September 27,
 7 2013 through the date of this Notice of Removal.

8 36. As of December 2014, the median number of months for a civil
 9 lawsuit to proceed from filing to trial in the Central District of California was 19.9
 10 months. *See United States District Court - Central District of California profile at*
 11 [http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-](http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-december-2014.aspx)
 12 [courts-december-2014.aspx](http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-december-2014.aspx). As such, Plaintiff's alleged back pay damages can be
 13 expected to increase by approximately \$31,957.47, to \$66,771.47. When
 14 Plaintiff's front pay damages and damages for emotional distress are included, it is
 15 more probable than not that Plaintiff's alleged compensatory damages alone are
 16 sufficient to satisfy the minimum threshold for diversity jurisdiction.

17 37. Plaintiff also alleges that he seeks "punitive damages in the sum
 18 sufficient to make a proper example of [ConAgra and Ralcorp] and to deter future
 19 same or similar conduct," and attorneys' fees. *See Exhibit A*, Plaintiff's Complaint
 20 at ¶¶ 33, 40, 41, 48, 49, 57, 58, 66, 67, 73 and p. 13.

21 38. Accordingly, a review of the allegations contained in Plaintiff's
 22 Complaint demonstrates that it is more probable than not that Plaintiff's claims
 23 exceed the \$75,000 minimum jurisdictional amount for diversity jurisdiction in this
 24 Court.²

25 39. As established above, there is complete diversity between the relevant

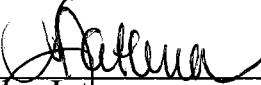
27 ² Additionally, on Plaintiff's Civil Case Cover Sheet, Plaintiff checked the box
 28 indicating that he is seeking "Unlimited" monetary damages. *See Exhibit A*, Form
 CM-010.

1 parties and the amount in controversy exceeds \$75,000. Therefore, this Court has
2 original jurisdiction pursuant to 28 U.S.C. § 1332, and this case is removable to
3 this Court pursuant to the provisions of 28 U.S.C. § 1441.

4 WHEREFORE, Defendants ConAgra Foods, Inc. and Ralcorp Holdings,
5 Inc. respectfully remove this action now pending in the Superior Court of
6 California in and for Los Angeles County to the United States District Court for
7 the Central District of California, Western Division.

8
9 DATED: May 1, 2015

JACKSON LEWIS P.C.

10
11 By: 
12 Nicky Jatana
Caroline B. Wolf

13 HUSCH BLACKWELL LLP
14 Randall S. Thompson
Anthony G. Grice

15 Attorneys for Defendants
16 CONAGRA FOODS, INC. and
17 RALCORP HOLDINGS, INC.